IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2223 OF 2005

Shri Gandharv Sampat Nikam & Ors. : Petitioners

(Orig. Judgement-Debtor)

V/s.

Shri Satyavijay Anna Nikam & Ors. : Respondents

(No.1 Orig. Decree Holder)

...

Mr.Dilip Bodake for the petitioners.

Mr.P.P.Chavan with Mr.V.M.Bhate for the respondent no.1.

...

CORAM : S.A. BOBDE, J.

June 22, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Chavan, learned counsel, appears and waives service of rule on behalf of the respondent no.1.

Heard by consent.

2. The petitioner as a judgement-debtor has challenged the order of the Addl. Commissioner confirming the order of the Collector made in the course of a partition in pursuance of a decree of the Civil Court. The respondent filed the suit in which the Court decreed 5/12th share to

him and to the petitioner 1/12th share. Admittedly, the sisters have given their share to the petitioner as a result of which he is entitled admittedly to 7/12th share. Admittedly, 5/12th share of the respondent no.1 comes to two hectares and 10 ares. However, he has been given two hectares and 22 ares in order to avoid violation of the Fragmentation Act. Admittedly, even though the respondent no.1 has got about 12 acres more, the Commissioner has not made any provision for compensation to the petitioner for the additional 12 acres given to the respondent. Only on this ground, I consider it appropriate to set aside the order of the Addl. Commissioner dated 6.1.2005 with a direction to determine the compensation which the respondent is liable to pay for receiving additional 12 acres in order to prevent violation of the Fragmentation Act. The Additional Commissioner shall determine this amount, as early as possible, and, in any case, not later than two months from the date the parties appear before him. The parties are directed to appear before the Addl. Commissioner, Pune Division, on 11.7.2005.

3. The rule is made absolute in the aforesaid terms.

S.A. BOBDE, J.